IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

ST.Rev..No. 197 of 2007

TA.256/2005 of SALES TAX APPELLATE .TRIBUNAL, ADDL.BENCH,KOZHIKODE.
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REVISION PETITIONER/APPELLANT

M/S.MALABAR ENGINEERING COMPANY,PALAYM, CALICUT.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT: RESPONDENT

STATE OF KERALA

BY SENIOR GOVERNMENT PLEADER SRI MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

S.T.Rev.No.197 of 2007

Dated, this the 2nd day of July, 2007

ORDER

H.L. DATTU, CJ.

This revision is under the provisions of the Kerala General Sales Tax Act (for short the KGST Act). The assessment year in question is 2000-01.

2. The assessee is a dealer registered under the provisions of the KGST Act. For the assessment year 2000-01, he had filed his return before the assessing authority. The assessing authority had quantified the tax liability of the assessee and passed an order dated 13.2.2004. Aggrieved by the quantification so made by the assessing authority, the assessee was before the first appellate authority who by its order dated 29.3.2005 had allowed the appeal in part. Aggrieved by the said findings of the first appellate authority, the State had carried the matter by way of second appeal before the Appellate Tribunal. The Tribunal by its order dated 30th October 2006 has stated as under:

> "4. We have considered the contentions of both sides. The records reveal that the assessee has failed to produce the work order received from Awarders. Moreover labour and other service charges accounted were not proved with supporting evidences. The authority below has not considered these aspects while disposing the appeal. In this context it is particular to note that the document

> produced by the assessee in support of the claim of exemption before the assessing authority revealed transfer of materials also. Considering all the above we are of the view that the authority below has not considered the actual position in respect of the work done by the assessee. Considering th above the order of the authority below is set aside and the order of assessment stands restored."

3. Aggrieved by the said order passed by the Tribunal, the assessee is before us in this revision petition filed under section 41 of the KGST Act. The questions of law framed by the assessee are as under:

> "(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal has erred in law in reversing the Annexure-B order and restoring the Annexure-A assessment order considering the fact that the appellant had maintained proper books of accounts as found by the 1st appellate authority?
>
> (2) Whether on the facts and in the circumstances of the case the Appellate Tribunal has erred in law in confirming the estimation of taxable turnover made under Annexure-A order, considering the fact that more than 95% of the purchases were made after payment of tax?
>
> (3) Whether on the facts and in the circumstances of the case the levy of tax on the value of tax suffered goods made under Annexure-A order and confirmed under Annexure-C order is sustainable under law?"

4. Shri Shamsudheen, learned counsel appearing for the petitioner, vehemently contends that before the assessing authority, the assessee

had produced all the relevant documents in support of the claim made by him for exemption from payment of tax. Therefore, the learned counsel would submit that the first appellate authority was justified in remanding the matter to the assessing authority to re-look into the records produced by the assessee and then pass a fresh order.

5. In the appeal filed by the State before the Tribunal, the Tribunal has secured the records of the assessing authority. After perusal of the same, the last fact finding authority, namely, the Tribunal has come to the conclusion that in order to claim exemption from payment of tax, the assessee had not produced the necessary and relevant documents. Having come to that conclusion, the Tribunal has rejected the appeal.

6. Section 41 of the Act provides for filing of a revision petition by an assessee if the assessee is aggrieved by the orders passed by the Tribunal only on two grounds. Firstly, if the Tribunal is failed to decide the question of law, or, secondly if the Tribunal has decided the question of law erroneously.

7. As we have already stated, the Tribunal is not only the fact finding authority, but also the Tribunal can look into the question of law that is framed by the assessee. In the instant case, as we have noticed earlier, the Tribunal has called for the records from the assessing authority and after perusal of the records it has come to the conclusion that to claim exemption from payment of tax under the Act, the assessee had not produced any material before either the assessing authority or before the

Tribunal and therefore, the appellate authority on mere presumption and assumptions could not have remanded the matter to the assessing authority, for the purpose of rehearing and for passing a fresh assessment order. Therefore, we say that the orders passed by the Tribunal is fully in consonance with the provisions of the Act. Therefore, the revision petition requires to be rejected and accordingly it is rejected. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/DK.